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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BAS ORDING, STEVEN P. JOBS, and DONALD J. LINDSAY

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Appeal 2007-4296<sup>1</sup>  
Application 09/467,074  
Technology Center 2100

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Decided: February 4, 2008

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Before HOWARD B. BLANKENSHIP, ALLEN R. MACDONALD, and  
JEAN R. HOMERE, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> Filed Dec. 20, 1999. The real party in interest in this appeal is Apple Computer, Inc.

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 through 5, 9 through 22, 24 through 28, 31, 32, 35 through 38, 42 through 64, 67, 68, 71, 72, 74, 76, 79 through 100, 103, 104, 107, 108, 118 through 123, and 126 through 141. Appellants have canceled claims 23 and 73. The Examiner has allowed claims 109 through 117. The Examiner has indicated that claims 6 through 8, 29, 30, 33, 34, 39 through 41, 65, 66, 69, 70, 75, 77, 78, 101, 102, 105, 106, 124, and 125 contain allowable subject matter, but are objected to as being dependent upon a rejected base claim. Appellants presented oral arguments at a hearing on January 17, 2008. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

## The Invention

Appellants invented a method and system for selectively magnifying a plurality of icons or tiles (630, 640) in a graphical user interface (GUI) based on the position of a cursor (610) on the GUI. (Spec. 11.) Particularly, as depicted in Figure 6, the GUI includes a userbar (600) whereupon the tiles (630, 640) are aligned. When the cursor (610) is proximate to the userbar (600), an underlining processor varies the size of the tile that is closest to the cursor, while repositioning the other tiles on the user bar to accommodate the varied size of the one tile. (Spec. 17.) In Appellants' own words,

As the cursor 610 moves over the userbar 600, certain tiles experience increased magnification, while other tiles' magnification decreases, based on their relative distance to the current cursor position.

(Spec. 17, ll. 22-24.)

An understanding of the invention can be derived from exemplary independent claims 1, 35, and 128, which read as follows:

1. A computer system comprising:

a display;

a cursor for pointing to a position within said display;

a bar rendered on said display and having a plurality of tiles associated therewith; and

a processor for varying a size of at least one of said plurality of tiles on said display when said cursor is proximate said bar on said display and for repositioning others of said plurality of tiles along said bar to accommodate the varied size of said one tile.

35. A computer system comprising:

a display;

a cursor means for pointing to a position within said display;

a userbar rendered on said display and having a plurality of tiles associated therewith; and

a processor means for varying a position of at least one of said plurality of tiles on said display when said cursor is proximate said bar on said display.

128. A method for displaying items in a graphical user interface, comprising the steps of:

displaying a plurality of said items at a default height in a region of said graphical user interface;

detecting that a cursor is within a threshold distance from any of said plurality of items; and

increasing the height of at least one of said items closest to said cursor from said default height to a fixed maximum level upon detecting that the cursor is within said threshold distance and maintaining said height at said fixed level while said cursor is equal to or less than said threshold distance from said one item.

The Examiner relies upon the following prior art to reject the claims on appeal:

Ludolph	US 5,657,049	Aug. 12, 1997
Selker	US 5,736,974	Apr. 7, 1998
Malamud	US 5,825,357	Oct. 20, 1998
Mackinlay	US 6,256,649 B1	Jul. 3, 2001

Carpendale, Distortion Viewing Techniques for 3-Dimensional Data, pp 46-53, 1996.

The Examiner rejects the claims on appeal as follows:

A . Claims 1 through 5, 9, 10, 12 through 15, 20, 21, 25 through 27, 35 through 38, 42 through 46, 48 through 51, 56, 57, 61 through 63, 71, 74, 76,

79 through 82, 84 through 87, 92, 93, 98, 99, 107, 118 through 123, and 127 through 141 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Selker and Carpendale.

B. Claims 11, 16, 17, 22, 24, 47, 52, 53, 58 through 60, 72, 83, 88, 89, 94 through 97, 108, and 126 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Selker, Carpendale, and Malamud.

C. Claims 18, 19, 54, 55, 90, and 91 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Selker, Carpendale, and Ludolph.

D. Claims 28, 31, 32, 64, 67, 68, 100, 103, and 104 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Selker, Carpendale, and Mackinlay.

### FINDINGS OF FACT

The following findings of fact are supported by a preponderance of the evidence.

### Prior Art Relied Upon

1. Selker discloses a method and system for enhancing the visibility of an icon in a GUI by increasing the size of the icon in inverse relation to the proximity of a cursor to the icon. (Col. 4, ll. 20-29.)

2. As depicted in Figures 1 through 4, the GUI includes a userbar (icon menu 30) having a plurality of icons positioned thereon. As the cursor

(20) approaches a particular icon, a processor repositions the icon to the forefront of the userbar, leaving the other icons on the userbar unaffected. The size of the repositioned icon gradually expands from a default height and width to reach a maximum height and width when the cursor (20) touches the icon. (Col. 5, ll. 19-44.)

3. Selker discloses that a user can select attributes such as the horizontal and vertical addresses for each icon on the userbar to identify the icon with the closest address to that of the cursor. (Col. 5, ll. 33-46.) Further, Selker discloses that a user may specify the degree of expansion of the icon. (Col. 5, ll. 45-50, col. 6, ll. 19-20.)

4. Carpendale discloses the use of a distortion function on a 2-D image in order to view all previously obstructed details of the image in a 3-D format. (Pp. 47, 48.)

#### PRINCIPLES OF LAW

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”). *Leapfrog Enter., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (quoting *KSR Int’l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41(2007)). “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent’s claims.” *KSR*, 127 S. Ct. at 1742.

Discussing the obviousness of claimed combinations of elements of prior art, *KSR* explains:



When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [v. *AG Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

*KSR*, 127 S. Ct. at 1740. Where the claimed subject matter cannot be fairly characterized as involving the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness can be based on a showing that there was “an apparent reason to combine the known elements in the fashion claimed.” *KSR*, 127 S. Ct. at 1740-41. Such a showing requires “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, 127 S. Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 987(Fed. Cir. 2006)).

The reasoning given as support for the conclusion of obviousness can be based on interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, and the background knowledge possessed by a person having ordinary skill in the

art. *KSR*, 127 S. Ct. at 1740-41. *See also Dystar Textilfarben GmbH v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2007).

We note our reviewing court has recently reaffirmed that:

[A]n implicit motivation to combine exists not only when a suggestion may be gleaned from the prior art as a whole, but when the ‘improvement’ is technology-independent and the combination of references results in a product or process that is more desirable, for example because it is stronger, cheaper, cleaner, faster, lighter, smaller, more durable, or more efficient. Because the desire to enhance commercial opportunities by improving a product or process is universal—and even common-sensical—we have held that there exists in these situations a motivation to combine prior art references even absent any hint of suggestion in the references themselves. In such situations, the proper question is whether the ordinary artisan possesses knowledge and skills rendering him capable of combining the prior art references.

*Leapfrog*, 485 F.3d at 1162 (holding it “obvious to combine the Bevan device with the SSR to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost”).

Also, a reference may suggest a solution to a problem it was not designed to solve and thus does not discuss. *KSR*, 137 S. Ct. at 1742 (“Common sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a

puzzle. . . . A person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

The prior art relied on to prove obviousness must be analogous art.

As explained in *Kahn*,

the “analogous-art” test . . . has long been part of the primary Graham analysis articulated by the Supreme Court. *See Dann* [v. *Johnston*,] 425 U.S. [219,] 227-29 (1976), *Graham*, 383 U.S. at 35. The analogous-art test requires that the Board show that a reference is either in the field of the applicant's endeavor or is reasonably pertinent to the problem with which the inventor was concerned in order to rely on that reference as a basis for rejection. *In re Oetiker*, at 1447. References are selected as being reasonably pertinent to the problem based on the judgment of a person having ordinary skill in the art. *Id.* (“[I]t is necessary to consider ‘the reality of the circumstances,’—in other words, common sense—in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.” (quoting *In re Wood*, 599 F.2d 1032 (C.C.P.A. 1979))).

*Kahn*, 441 F.3d at 986-87. *See also In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992) (“[a] reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem.”).

In view of KSR’s holding that “*any* need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed,” 127 S.

Ct. at 1742 (emphasis added), it is clear that the second part of the analogous-art test as stated in *Clay, supra*, must be expanded to require a determination of whether the reference, even though it may be in a different field from that of the inventor's endeavor, is one which, because of the matter with which it deals, logically would have commended itself to an artisan's (not necessarily the inventor's) attention in considering *any* need or problem known in the field of endeavor. Furthermore, although under *KSR* it is not always necessary to identify a known need or problem as a motivation for modifying or combining the prior art, it is nevertheless always necessary that the prior art relied on to prove obviousness be analogous. *See KSR*, 127 S. Ct. at 1739. ("The Court [in *United States v. Adams*, 383 U.S. 39, 40 (1966)] recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another *known in the field*, the combination must do more than yield a predictable result.") (emphasis added). *See also Sakraida*, 425 U.S. at 280 ("Our independent examination of that evidence persuades us of its sufficiency to support the District Court's finding 'as a fact that each and all of the component parts of this patent . . . were old and well-known throughout the dairy industry long prior to the date of the filing of the application for the Gribble patent.'").

## ANALYSIS

Claims 1, 71, 107, 118, 136, and 139, and Respective Dependent Claims

We note that independent claims 1, 71, 107, 118, 136, and 139 require in relevant part the following limitations:

### Claim 1

a processor for varying the size of a tile or an icon and for repositioning other tiles along the bar to accommodate the varied size of the tile when a cursor is proximate to the bar.

### Claim 71

[M]agnifying at least one of said items closest to said cursor to a first level and magnifying items proximate to said one item to other levels less than said first level.

### Claim 107

[M]agnifying at least one of said items closest to said cursor to a first level and magnifying items proximate to said one item to other levels less than said first level.

### Claim 118

[M]agnifying the size of at least one of said icons as said cursor is moved into the vicinity of said one icon; and repositioning others of the icons along said row to accommodate the magnified size of said one icon.

Claim 136

[M]agnifying the size of the item closest to said cursor to a designated level and magnifying other items proximate said closest item to levels less than said designated level; and moving the items along said row to accommodate the magnified sizes of items so that items in the vicinity of said magnified items are not obscured.

Claim 139

[M]agnify the size of the item closest to said cursor to a designated level and magnify other items proximate said closest item to levels less than said designated level, and to move the items along said row to accommodate the magnified sizes of items so that items in the vicinity of said magnified items are not obscured.

(App. Br., Appendix A.)

Appellants argue that the combination of Selker and Carpendale does not render the cited claims unpatentable for the following reasons:

(i) There is insufficient rationale to combine Selker and Carpendale. There is a lack of relationship between the references since Selker does not need to employ Carpendale's distortion function to move some of the icons out of the way to view the icons in a 3-D format. (App. Br. 5-6.)

(ii) Neither Selker nor Carpendale teaches the claimed invention.

Particularly, Appellants state:

There is no teaching in either of the references which suggests that this objective is applicable to the presentation of menus or other collections of icons in a graphical user interface for personal computers. Typically, items in a menu might all pertain to a general

category, but the order of the presentation within that category is irrelevant. In other words, when a user desires a particular item from a menu, he is not concerned with which other items are near the item of interest in the menu, he is only focused upon the item of interest. Thus, in an icon menu of the type described in the Selker patent, the context of the individual icons is not important. As such, the objective is of the Carpendale publication does not apply.

(App. Br. 7.)

In response, the Examiner finds the following:

(i) Selker discloses a method for improving the visibility of an icon by increasing the size of said icon when a pointer approaches it. Carpendale complements Selker's teaching by disclosing the magnification of a chosen focus to reposition neighboring objects to thereby accommodate different sizes of the focal object. (Ans. 17.)

(ii) One of ordinary skill would have found that repositioning hidden objects in Selker's userbar to make them visible is a sufficient reason for combining the references. (*Id.*)

Therefore, the issue before us is whether the combination of Selker and Carpendale teaches repositioning or magnifying other icons on the userbar when the cursor approaches an icon on the userbar, and causes said icon to be magnified?

We do not agree with the Examiner that the combined disclosures of Selker and Carpendale reasonably teach that limitation.

As set forth in the Findings of Fact (FF) section above, Selker discloses enhancing the visibility of an icon by gradually magnifying said icon in the forefront of a userbar as a cursor gets closer to said icon without affecting the other icons on the userbar. (FF 1-2.) Further, Carpendale discloses enhancing the visibility of previously obstructed objects by applying a distortion function on an image containing the objects. (FF 4.)

One of ordinary skill in the art, at the time of the present invention, would have readily recognized that the combination of Selker and Carpendale, at best, amounts to magnifying an icon in the forefront of a userbar as a cursor approaches the icon (without affecting the other icons on the userbar), and displaying previously obstructed icons on the userbar to make them visible. However, we find no such obstructed icons in Selker's userbar. Consequently, the Examiner's reliance on Carpendale is improper here as it requires the occurrence of an event not contemplated in Selker. Therefore, the proffered combination would not predictably result in repositioning or magnifying other icons on the userbar as a result of the cursor approaching an icon on said userbar. We conclude that Appellants have shown that the Examiner erred in rejecting independent claims 1, 71, 107, 118, 136, and 139 as being unpatentable over the combination of Selker and Carpendale.



Since neither Malamud, Ludolph, nor Mackinlay as applied remedy the deficiencies in the rejection against the independent claims, we further conclude that Appellants have shown that the Examiner erred in rejecting the following dependent claims:

- i. Claims 2 through 5, 9, 10, 12 through 15, 20, 21, 25 through 27, 74, 76, 79 through 82, 84 through 87, 92, 93, 98, 99, 119 through 123, 127, 137, 138, 140, and 141 over the combination of Selker and Carpendale under 35 U.S.C. § 103(a).
- ii. Claims 11, 16, 17, 22, 24, 72, 83, 88, 89, 94 through 97, 108, and 126 over the combination of Selker, Carpendale, and Malamud under 35 U.S.C. § 103(a).
- iii. Claims 18, 19, 54, 55, 90, and 91 over the combination of Selker, Carpendale, and Ludolph under 35 U.S.C. § 103(a).
- iv. Claims 28, 31, 32, 100, 103, and 104 over the combination of Selker, Carpendale, and Mackinlay under 35 U.S.C. § 103(a).

Claims 35 through 38, 42 through 64, 67, and 68

Independent claim 35 requires in relevant part varying a position of at least one of said plurality of tiles on said display when said cursor is proximate said bar on said display. (App. Br., Claim Appendix.) Appellants and the Examiner maintain the same positions submitted above in the discussion of independent claims 1, 71, 107, 118, 136, and 139. Therefore,

the issue here is whether the position of one of Selker's icons varies as the cursor approaches the userbar?

We agree with the Examiner that the combination of Selker and Carpendale reasonably teaches that limitation.

As set forth in the Finding of Fact section, Selker teaches that as the cursor approaches an icon on the userbar, the size of the icon is magnified and it is repositioned to the forefront of the userbar. (FF 2.) One of ordinary skill in the art would readily recognize that the position or center of gravity of the icon varies when it is repositioned from being aligned with the other icons on the userbar to being on the forefront of said userbar. We are satisfied this disclosure of Selker reasonably teaches that the position of the icon varies as the cursor approaches the userbar.

Regarding dependent claim 38, Appellants argue that Selker does not teach varying the position of one the icons based on a predefined relationship between the effect width, default height, and the selected maximum height. (App. Br. 8.) We disagree. Selker teaches gradually increasing the size of the icon from a default height to a maximum height as the cursor approaches and touches the icon. (FF 2.) One of ordinary skill would readily recognize that once the icon has been repositioned in its maximum height to the forefront of the userbar, a relationship automatically arises between its default height, its effect width and the maximum height.

Regarding dependent claims 43, 44, 48 through 51, and 60, Appellants argue that Selker does not teach that a user can select the value of an

attribute for the userbar (e.g. a max size. (App. Br. 9.) We disagree. Selker teaches that a user can select attributes such as the horizontal and vertical addresses for each icon on the userbar to identify the icon with the closest address to that of the cursor. Selker further teaches that a user can specify the degree of expansion of the icon. (FF 3.)

Regarding dependent claim 57, Appellants argue that neither Selker nor Carpendale teaches a plurality of tiles that occupy multiple rows on the display. (App. Br. 10.) We disagree. Selker teaches that as the cursor approaches any icon on the userbar, the size of that icon is magnified on the display. (FF 2.) One of ordinary skill in the art would readily recognize that icons that are magnified as a result of being approached by the cursor span over at least two rows on the display. Further, we note that since Appellants have not provided a definition of the rows, they can be interpreted as having any reasonable dimension on said display. Therefore, any of Selker's tiles (magnified or non-magnified) can be viewed as occupying a plurality of rows on the display.

Consequently, we conclude that Appellants have not shown that the Examiner erred in rejecting claims 35, 38, 43, 44, 57, and 48 through 51 as being unpatentable over the combination of Selker and Carpendale. Similarly, Appellants have not shown that the Examiner erred in rejecting claim 60 over the combination of Selker, Carpendale, and Malamud.

Appellants did not provide separate arguments with respect to the rejection of claims 36, 37, 42, 45 through 47, 52 through 56, 58, 59, 61

through 64, 67, and 68. Therefore, we select independent claim 35 as being representative of the cited claims. These claims consequently fall together with representative claim 35. *See also* 37 C.F.R. § 41.37(c)(1)(vii).

#### Claims 128 through 135

Independent claim 128 requires in relevant part upon detecting that the cursor is within a threshold distance from an item closest to the cursor, increasing the height of the item from a default height to a fixed maximum level, and maintaining the height at the fixed level while the cursor is equal or less than the threshold distance from the item. (App. Br., Appendix A.)

Appellants argue that the combination of Selker and Carpendale does not teach or suggest this limitation. Particularly Appellants argue the following:

[T]he Selker patent discloses an arrangement in which the size of the icon is increased in a generally inverse relation to the proximity of the cursor...Consequently, the icon does not reach its maximum size until it has actually “captured” the cursor. Even then, as the cursor continues to move towards the icon menu 30, the selected icon can continues to grow. See column 5, line 65 to column 6, line 5. . . .

Thus, while the icon eventually reaches a maximum size, it does not do so by being magnified from its default size...scaling to maximum size is not automatically achieved by detecting that the cursor has come within the threshold distance.

(App. Br. 11-12.)

In response, the Examiner submits that Selker teaches the claimed limitation through its disclosure that an icon increases to a maximum size upon detecting that the cursor is within a specific and predefined threshold distance. (Ans. 23.)

Therefore, the issue before us is whether Selker's icon reaches a maximum height from a default height upon detecting that the cursor is within a threshold distance of the icon, and maintaining the height at a fixed level while the cursor is equal or less than the threshold distance from the icon?

We agree with the Examiner that Selker's disclosure reasonably teaches that limitation.

As set forth in the Finding of Fact section above, Selker discloses that as the cursor comes within a particular distance from an icon (closest to the cursor), the size of the icon *gradually* increases from a default height to reach a maximum height when the cursor touches the icon. (FF 2.) One of ordinary skill in the art would readily recognize from Selker's disclosure that upon detecting that the cursor touches the icon (the threshold distance), the size of the icon reaches a fixed maximum height. Furthermore, the ordinarily skilled artisan would readily appreciate that while Selker's cursor remains in contact with the icon, the maximum height of the icon remains fixed.

Appellants argue that Selker's icon does not reach its maximum size from a default size. This argument is unavailing. Appellants' claim merely

requires that the size of the icon start from a default height to reach a maximum height at the threshold distance. This language does not preclude the size of the icon from passing through intermediate heights before reaching the maximum height. We are satisfied this claim limitation reads on Selker's teaching that the size of the icon starts at a default height to eventually reach a maximum height when the cursor reaches the threshold distance. Consequently, we conclude that Appellants have not shown that the Examiner erred in rejecting independent claim 128 as being unpatentable over the combination of Selker and Carpendale.

Appellants did not provide separate arguments with respect to the rejection of claims 129 through 135. Therefore, we select independent claim 128 as being representative of the cited claims. These claims consequently fall together with representative claim 128. *See also* 37 C.F.R. § 41.37(c)(1)(vii).

#### CONCLUSIONS OF LAW

On the record before us, we conclude that:

A. Appellants have not shown that the Examiner failed to establish that the combination of Selker and Carpendale renders claims 35 through 38, 42 through 64, 67, 68, and 128 through 135 unpatentable under 35 U.S.C. § 103(a).

B. Appellants have shown that the Examiner failed to establish that:

- i. Claims 1 through 5, 9, 10, 12 through 15, 20, 21, 25 through 27, 71, 74, 76, 79 through 82, 84 through 87, 92, 93, 98, 99, 107, 118 through 123, and 127, and 136 through 141 are unpatentable over the combination of Selker and Carpendale under 35 U.S.C. § 103(a).
- ii. Claims 11, 16, 17, 22, 24, 72, 83, 88, 89, 94 through 97, 108, and 126 are unpatentable over the combination of Selker, Carpendale, and Malamud under 35 U.S.C. § 103(a).
- iii. Claims 18, 19, 54, 55, 90, and 91 are unpatentable over the combination of Selker, Carpendale, and Ludolph under 35 U.S.C. § 103(a).
- iv. Claims 28, 31, 32, 100, 103, and 104 are unpatentable over the combination of Selker, Carpendale, and Mackinlay under 35 U.S.C. § 103(a).

#### DECISION

We affirm the Examiner's decision rejecting claims 35 through 38, 42 through 64, 67, 68, and 128 through 135.

We reverse the Examiner's decision rejecting claims 1 through 5, 9 through 22, 24 through 28, 31, 32, 71, 72, 74, 76, 79 through 100, 103, 104, 107, 108, 118 through 123, 126, 127, and 136 through 141.

Appeal 2007-4296  
Application 09/467,074

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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